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August 13, 2014

VIA ELECTRONIC MAIL

Mr. Jeff S. Jordan
Supervisory Attorney
Federal Election Commission
999 E Street, NW
Washington, DC 22210

Re: MUR 6849

Dear Mr. Jordan:

Kansans for Responsible Government (the "Committee"), Willis "Wink" Hartman, and Michael O'Donnell, through counsel, hereby respond to the complaint designated MUR 6849 alleging violations of the Federal Election Campaign Act, as amended (the "Act"). The complaint, filed by a friend and supporter of Representative Mike Pompeo,¹ is nothing more than a fishing expedition that was intended to generate press coverage during a highly charged election. The complaint, which consists of a lengthy compilation of false statements and irrelevant evidence cobbled together to peddle a conspiracy theory, demonstrates Ms. Deterding's flexibility with the truth and ignorance of the law.² To more clearly highlight these deficiencies, the Committee has chosen to respond directly to each and every one of the twenty-one "facts" asserted by Ms. Deterding. Ultimately, a closer examination of these so-called facts reveals that the complaint does not provide sufficient

¹ Jane Deterding Colwich: "... I am proud to call Mike Pompeo my friend; I will be honored to have him serve as my congressman." See <http://www.pompeoforcongress.com/endorsements/?subsec=0&start=11>.

² For example, in support of Ms. Deterding's allegation of coordination, she provides evidence that Michael O'Donnell retweeted a tweet posted by @CongressmanMP: "Bring it on Tiahrt! I won't monitor your calls, I promise ;)". While Mr. O'Donnell readily admits to the retweet, Ms. Deterding's claim that the retweet constitutes coordination is absurd.

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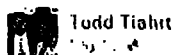
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evidence for the Federal Election Commission (the "Commission") to make a "Reason to Believe Finding" that the Committee violated the Act. We therefore respectfully urge the Commission to dismiss this matter without further action.

Responses to Each of the Listed Allegations

1. Ms. Deterding claims that "Tiahrt's Wichita office is located in the Hartman Oil Building . . ." Not only is this claim irrelevant to a coordination allegation for a number of reasons, it is also false. Mr. Tiahrt has not rented office space in the Hartman Oil Building since 2013, long before he became a candidate for Congress. Even if he were currently renting office space in the building, the mere act of renting of separate, distinct office space in a 44,000 square foot office building does not constitute coordination.³
2. Ms. Deterding claims Mr. Hartman ran unsuccessfully for Congress in 2010 and was defeated by Rep. Pompeo. This is a fact but does not constitute coordination.
3. Ms. Deterding claims Mr. Hartman and his wife hosted a reception for Tiahrt during the Kansas Republican Party's Kansas Day Activities, thereby insinuating that Mr. Hartman hosted a *campaign* event for Mr. Tiahrt in January 2014. Ms. Deterding fails to acknowledge, however, that (i) Mr. Tiahrt serves as the Kansas National Committeeman for the Republican National Committee; (ii) this particular event has been held every year while Mr. Tiahrt has held the position of National Committeeman; and (iii) neither Mr. Hartman nor his wife actually attended the event. Furthermore, Ms. Deterding has not offered any explanation or evidence as to how "[t]hose attending the reception were led to believe that Tiahrt would challenge incumbent Pompeo for the seat." Not only does this claim lack sufficient evidence, but it would not constitute coordination even if the claim were 100% factually accurate.
4. Ms. Deterding claims the Committee filed its Statement of Organization on May 13, 2014. Mr. Tiahrt's exploration of this race was well-publicized, and many Kansans expected Mr. Tiahrt to challenge Rep. Pompeo before he formally became a "candidate" pursuant to FEC regulations. Furthermore, by the morning of May 29, 2014, at the latest, it became clear to many people who were closely following the potential race that Mr. Tiahrt was planning to announce his candidacy. For example, Mr. Tiahrt posted the following on Facebook:



Please join us a 2pm today at the Kansas Aviation Museum, 3350 S
George Washington Blvd for an announcement

Share

123 25

³ http://www.lahamdevelopment.com/press_berkeleysquare_hartman2.html

Notably, the Committee's internal records demonstrate that a Committee agent contacted the Committee's media production consultant regarding the creation of the Committee's first public communication (a radio advertisement reported on the Committee's Schedule E on June 3, 2014) at 2:58 p.m. on May 29, 2014, the same day Mr. Tiahrt announced his candidacy.

5. Ms. Deterding claims Mr. Tiahrt announced his candidacy on May 29, 2014, and was introduced by Zoe Newton, former General Counsel for Hartman Companies. According to Ms. Newton's LinkedIn profile,⁴ Ms. Newton has not worked a Mr. Hartman-owned entity since May 2013. Nonetheless, Ms. Newton is an accomplished professional who was recently appointed by Governor Sam Brownback to serve on the Kansas Board of Regents, so one can contemplate a number of reasons why she was chosen to give the introduction that have nothing to do with Mr. Hartman or her former employment with Hartman Companies.
6. Ms. Deterding claims Mr. Tiahrt filed for the primary election on May 30, 2014. This is a fact but does not constitute coordination.
7. Ms. Deterding claims Mr. Tiahrt officially registered his campaign committee with the Commission on June 5, 2014. This is a fact but does not constitute coordination.
8. Ms. Deterding claims Mr. Hartman has made contributions to Tiahrt in past election efforts. This is a fact but does not constitute coordination.
9. Ms. Deterding claims the Committee made an independent expenditure on June 2, 2014. This is a fact but does not constitute coordination.
10. Ms. Deterding claims that Mr. Hartman sent an e-mail to various supporters inviting them to a Tiahrt fundraiser held at a restaurant in which Mr. Hartman has a majority ownership stake. Mr. Hartman sent the e-mail to his personal friends and contacts, and the e-mail did not mention the Committee or its efforts. Even if it had, however, inviting personal friends and contacts to a Tiahrt fundraiser does not constitute coordination. Furthermore, Ms. Deterding fails to explain how Mr. Hartman's majority ownership of Chester's Chophouse satisfies any prong of the coordination regulation.
11. Ms. Deterding claims Mr. Hartman expressed his strong support for Mr. Tiahrt on his radio show on June 4, 2014. It is unclear why the fact that Mr. Tiahrt hosts his own radio show on a separate night is relevant. Regardless, Ms. Deterding fails to provide any reasoning for why statements made by Mr. Hartman's on his radio show would not be covered by the press exemption, or how there is any actual connection between this radio show and the Committee's independent expenditures at issue in the complaint.

⁴ <https://www.linkedin.com/pub/zoe-newton/15/611/262>

12. Ms. Deterding claims that she has "reliable information from local Wichita radio executives" that Mr. O'Donnell brokered the deal with KQAM to establish the talk shows for Mr. Tiahrt and Mr. Hartman. According to Mr. O'Donnell, however, he had nothing to do with these deals and initially found out about them approximately one week before Mr. Tiahrt and Mr. Hartman were each scheduled to host their first radio shows. Regardless, Ms. Deterding fails to provide any connection between these radio shows and the Committee's independent expenditures at issue in the complaint.
13. Ms. Deterding claims that Mr. O'Donnell is a direct employee of Mr. Hartman and previously served as deputy campaign manager for Mr. Hartman's 2010 unsuccessful campaign against Rep. Pompeo. Mr. O'Donnell served as Communications Director for Mr. Hartman's campaign, which is the same title he currently holds at Hartman Oil Company, Inc. Regardless, Ms. Deterding fails to provide any connection between Mr. O'Donnell's employment in 2010 to the Committee's independent expenditures at issue in the complaint.
14. Ms. Deterding claims that Jim Anderson, the owner of the PostNet franchise where the Committee maintains a Post Office Box, was a special guest on Mr. Tiahrt's radio show on June 10, 2014. PostNet is a franchise similar to Kinkos and Mail Boxes Etc., and there appear to be more than 300 PostNet franchises in the United States. Ms. Deterding appears to be insinuating that Mr. Anderson's radio show appearance amounts to coordination because the Committee rents a mail box at his PostNet franchise, which is simply ridiculous.
15. Ms. Deterding claims that Mr. O'Donnell "has been instrumental in securing radio and TV broadcast appearances and radio spots on behalf of Tiahrt, Hartman, and [the Committee]", and that Mr. O'Donnell "has identified himself to local broadcasting stations as representing Hartman as the marketing director, and [the Committee]." Mr. O'Donnell is employed by Hartman Oil Company, Inc. as its Communications Director, so it is certainly possible that Mr. O'Donnell has identified himself to local broadcasting stations in this role (both in the past and presumably in the future). In contrast, Mr. O'Donnell has never worked for Mr. Tiahrt and, to the best of Mr. O'Donnell's recollection, he has never identified himself to local broadcasting stations as a representative of Mr. Tiahrt or had a reason to. With respect to the Committee, to the best of Mr. O'Donnell's recollection, he has never identified himself to local broadcasting stations as a representative of the Committee or had a reason to because the Committee utilizes its own media buyer, Strategic Media Services in Arlington, Virginia. Indeed, Mr. O'Donnell was not even aware of who the Committee was utilizing for media buying services until he received Ms. Deterding's complaint. The unsubstantiated basis for Ms. Deterding's claim is apparent from her broad generalities ("This information has been obtain from various media executives...") that do not specifically identify the source of those claims or a recount of those alleged conversations. Furthermore, Ms. Deterding has failed to provide a copy of a NAB Form PB-16 from these "various media executives" that identifies Mr. O'Donnell as a representative of the Committee.

16. Ms. Deterding claims that "[i]n the weeks leading up to Tiahrt's announcement of his candidacy, O'Donnell acted to facilitate Tiahrt's public appearances and to support and promote Tiahrt's candidacy" Of the five instances in which Mr. O'Donnell allegedly "facilitate[d]" Tiahrt's candidacy, each of Ms. Deterding's claims are wrought with misstatements and missing pertinent information.
- a. Ms. Deterding claims Mr. O'Donnell and Mr. Tiahrt "arrived together and attended a local Republican Party meeting, including 'working the room' together." What Ms. Deterding fails to mention, however, is that Mr. O'Donnell is a State Senator and the meeting was held in his district (as the State Senator, Mr. O'Donnell tries to attend all local Republican Party meetings). Furthermore, it seems entirely reasonable for Mr. Tiahrt to attend the meeting if he was considering running for the U.S. House of Representatives. Ms. Deterding's claim also misstates the truth, as Mr. O'Donnell did not travel to the event with Mr. Tiahrt.
 - b. Ms. Deterding claims Mr. O'Donnell "accompanied Tiahrt when Tiahrt spoke at the 'Kansans for Liberty' campaign kick-off event" on May 3, 2014. Ms. Deterding's claim misstates the truth, as Mr. O'Donnell did not travel to the event with Mr. Tiahrt. It is also worth noting that Mr. O'Donnell received a personal invitation to attend the event from Craig Gabel, the founder of the organization.
 - c. Ms. Deterding claims Mr. O'Donnell "travelled with Tiahrt to a Town Hall Meeting in Winfield, Kansas, and adjourned with Tiahrt for dinner after the event" on May 5, 2014. This is one instance in which Mr. O'Donnell and Mr. Tiahrt traveled together to an event. Mr. O'Donnell's friend, Jace Mills, organized this Cowley County Republican Party Town Hall event, and Mr. O'Donnell was aware that Mr. Tiahrt was speaking at the event in his capacity as the Kansas National Committeeman. Since Cowley County is approximately a one hour drive from Wichita, Mr. O'Donnell and Mr. Tiahrt chose to carpool to the event. Of course, Mr. Tiahrt was not yet a candidate for the U.S. House of Representatives, and Ms. Deterding's insinuation that carpooling and sharing a meal amounts to coordination is based on mere speculation about conversations that did not occur.
 - d. Ms. Deterding claims Mr. O'Donnell "attended the Wichita Pachyderm meeting with Tiahrt, and asked a strategic question which gave Tiahrt the opening to address campaign issues and themes" on May 16, 2014. Again, Ms. Deterding fails to mention that Mr. O'Donnell is a State Senator and the meeting was held in his district (as the State Senator, Mr. O'Donnell frequently attends Wichita Pachyderm meetings). Ms. Deterding's claim misstates the truth, as Mr. O'Donnell did not travel to the event with Mr. Tiahrt. Finally, the question related to funding Mr. Tiahrt received to help investigate the famous BTK murders in Kansas. Regardless, asking a question at a Pachyderm meeting clearly does not implicate any prong of the coordination regulation.

- e. Ms. Deterding claims Mr. O'Donnell "worked the room together at the Sedgwick County Republican Party meeting" on May 22, 2014. Again, Ms. Deterding fails to mention that Mr. O'Donnell is a State Senator and the meeting was held in his district (as the State Senator, Mr. O'Donnell tries to attend all local Republican Party meetings). Regardless, Ms. Deterding fails to provide any specific information about what "work[ing] the room" entailed. Rather, Ms. Deterding relies on broad generalities to generate speculation about conversations that did not occur.
17. Ms. Deterding claims Mr. O'Donnell re-published public communications critical of Pompeo on his Twitter account on or about June 4, 2014. Mr. O'Donnell readily admits that he retweeted a tweet posted by @CongressmanMP: "Bring it on Tiahrt! I won't monitor your calls, I promise ;)" Ms. Deterding's insinuation that this retweet constitutes coordination as a republication of campaign materials is absurd and highlights her ignorance of the law.
18. Ms. Deterding claims "the Tiahrt Committee and the [Committee] have publicly promoted Tiahrt for Congress with coordinated messages and themes." First, it is clear from the excerpts provided by Ms. Deterding that the Committee did not copy Mr. Tiahrt's messaging to any significant degree, much less republish campaign materials verbatim. Furthermore, any person with the slightest understanding of politics understands that there are usually a handful of issues and themes important to voters in an election (especially a Republican primary election), and that such issues and themes are readily apparent from a wide variety of publicly available information.
19. Ms. Deterding claims the Committee made an expenditure for a "push poll" that was not reported. First, the poll referenced in the complaint was a legitimate public opinion poll that did not advocate for or against any candidate. Second, the expenditure for this public opinion poll was paid to Twin Oaks Connect and reported in the Committee's pre-primary report.
20. Ms. Deterding claims the Committee ran a radio advertisement without stating a permanent street address, telephone number, or URL address in the "paid for by" disclaimer. First, it appears that Ms. Deterding has failed to provide a copy of the advertisement at issue or even a website link to it. Second, even if the Commission obtained evidence that the Committee ran a single radio advertisement that was missing such information, the advertisement would have complied with the first two requirements of 11 C.F.R. § 110.11. There can be no question that, based on the script provided by Ms. Deterding, the advertisement at issue is unlike the kinds of anonymous advertising that the Bipartisan Campaign Reform Act sought to remedy. For example, simply typing "Kansans for Responsible Government" into a Google search reveals the Committee's phone number, URL address, and even an e-mail address. In this instance, even if the advertisement did not comply with the technical requirements of the rules, its objectives were clearly met and there would be no question that the Committee was

responsible for the advertisement. Under *Heckler v. Chaney*, 470 U.S. 821 (1985), the Commission has broad discretion to determine how to proceed with respect to complaints or referrals, and it has exercised its prosecutorial discretion to dismiss matters that do not merit the additional expenditure of Commission resources. This is such a matter.

21. Ms. Deterding claims that the Tiahrt campaign sent an email to its email distribution list encouraging supporters to obtain yard signs at two addresses, one of which was the PostNet facility utilized by the Committee. As stated previously, PostNet is a franchise similar to Kinkos and Mail Boxes Etc., and there appear to be more than 300 PostNet franchises in the United States. Ms. Deterding fails to explain how the Committee's utilization of a Post Office Box at this mail facility amounts to coordination.

Finally, the Committee wishes to address several of the claims that Ms. Deterding makes in the "Analysis" section of the complaint.

- Ms. Deterding claims "[Mr. Hartman and Mr. O'Donnell] have reserved broadcasts spots well in advance of any public indication that Tiarht was doing more than considering entering the race . . ." To be clear, the Committee did not reserve any broadcast spots prior to Mr. Tiahrt's announcement of his candidacy. Furthermore, internal records demonstrate that the creation of the Committee's first public communication (a radio advertisement reported on the Committee's Schedule E on June 3, 2014) commenced at 2:58 P.M. on May 29, 2014, the same day Mr. Tiahrt announced his candidacy.
- Ms. Deterding claims Mr. O'Donnell "clearly acted as an agent of the Tiahrt Committee for the purpose of promoting Tiahrt's candidacy for Congress." Even if Ms. Deterding's allegations were true, a determination that Mr. O'Donnell is an agent of the Tiahrt campaign requires a strained reading of agency law that would mean that many typical campaign supporters are campaign agents. Regardless, Ms. Deterding's agency claim is a figment of her imagination conjured up through false statements and unsubstantiated claims.

Conclusion

The Committee urges the Commission to dismiss this matter without further action because the complaint does not provide sufficient evidence to support a Reason to Believe Finding. Furthermore, the complaint also does not comply with the Commission's *Guidebook for Complainants and Respondents on the FEC Enforcement Process*, which specifies that complaints should "[d]ifferentiate between statements based on the complainant's personal knowledge and those based on information and belief" and that "[s]tatements not based on personal knowledge should identify the source of the information."⁵ Assuming that Ms. Deterding had simply been provided inaccurate

⁵ http://fec.gov/em/respondent_guide.pdf

information from a third party, it would have been acceptable for her to allege the following: "*Based on information and belief*, on May 3, 2014, O'Donnell accompanied Tiahrt when Tiahrt spoke at the 'Kansans for Liberty' campaign kick-off event." In contrast, Ms. Deterding, an award-winning attorney⁶ with more than thirteen years of legal experience,⁷ made this particular allegation as if it were an incontrovertible fact: "On May 3, 2014, O'Donnell accompanied Tiahrt when Tiahrt spoke at the 'Kansans for Liberty' campaign kick-off event." Ms. Deterding misled the Commission in multiple instances in this manner, and it appears she should have the expertise and sense to not assert unsubstantiated allegations as "fact" when making claims under penalty of perjury.

If you require additional information, or if I can be of any assistance, then I can be reached at (512) 354-1783.

Sincerely,



Chris K. Gober

⁶ <http://www.bizjournals.com/wichita/feature/40under40/jane-a-deterding.html?page=all>

⁷ <https://www.linkedin.com/pub/jane-deterding/11/85b/846>